

Probate Laws and Records for Swedish Genealogy

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Swedish probate records (also known as estate inventories) are known for having rich genealogical information. We usually glean the key information and move on, but what's the bigger picture? Why are there more probates than wills? What are the laws behind them? This presentation will focus on the probate laws and how they help us understand the probate records.

Probate Laws

The Swedish probate laws provided rules for matters such as the order of succession, distribution of an inheritance, actions for recovery, and the settlement of debts incurred by the deceased. The origin of Swedish probate laws began with King Magnus Eriksson who is known for the Stads Lag (laws pertaining to the cities) and Lands Lag (laws pertaining to rural areas) which were created in about 1350. King Christopher of Bavaria revised Magnus Erikssons Lands Lag in 1442 without significant changes to marriage rights and inheritance laws, and the Stads Lag continued to be used without changes to the city law. Both the city and rural laws were used until the 1734 Swedish Law replaced them.

King Magnus Erikssons Inheritance Laws

In medieval rural society where land holdings established wealth, there was a concern to keep and protect a "estate" within a family for as long as possible. One way of protecting was by restricting testation¹ and another was to favor males over females. Traditional views in medieval Sweden limited freedom of testation to solely members of the family which conflicted with the view of the Roman Catholic Church at the time². The conflict between civil and church authorities over the right of testation may explain why there are no provisions on wills in Magnus Erikssons legal code.

Without a "will" the distribution of inheritance went to the survivors in the following order: First to the spouse (by marriage rights³), then by succession starting with the children, and then the grandchildren. If there were no descendants, then the remaining estate went to other family members in the following order: parents of deceased, siblings of the deceased, paternal grandparents, maternal grandparents, father's siblings, mother's siblings, and then to paternal

¹ The act or power of disposing of property by testament or will.

² One compromise was the law of Uppland which allowed a testator to give all his personal property and acquired (not inherited) real estate to the church.

³ A wife would receive the morning gift (morgongåva), a cash value of the estate which varied before and after the 1734 Swedish Law. Another claim on the estate was by "marriage right" see the section **Inheritance Portions**. The 1915 Marriage laws abolished the morgongåva.

and maternal cousins. If there was no claim within 1 year, it was divided between equally between the king and the church.

1734 Swedish Law

The 1734 Swedish Law replaced Magnus Erikssons city and rural laws. The inheritance laws from spouse (by marriage rights), children, grandchildren, parents of deceased, and siblings of the deceased remained the same. The 1734 law then went to $\frac{1}{2}$ siblings of the deceased, and $\frac{1}{2}$ siblings of the deceased's children before going to paternal grandparents, maternal grandparents, and the deceased's parent's siblings. If there was nobody to inherit at this point, the distribution went to great grandparents, siblings and $\frac{1}{2}$ sibling's grandchildren, the deceased's father's and mother's cousins, grandparent's siblings, and great grandparents.

Inheritance Portions

King Magnus Erikssons city and rural laws dictated inheritance portions by marriage, succession, and distribution laws. The marriage right for the wife was $\frac{1}{3}$ of the estate in rural areas and $\frac{1}{2}$ in the cities. A husband's right was $\frac{2}{3}$ in rural areas or $\frac{1}{2}$ in the cities. The remaining amount would be distributed to relatives according to the rules of succession following the pattern of $\frac{1}{3}$, $\frac{2}{3}$, or $\frac{1}{2}$ depending on gender and place of residence. The 1734 law continued the inheritance portions of $\frac{2}{3}$ to males and $\frac{1}{3}$ to females, although children of priests and city burghers would inherit $\frac{1}{2}$ according to city rights. Inheritance portions for males and females were made equal in 1845. Additional changes to the probate laws were made in 1920 for the surviving spouse when the couple had no descendants. In 1929 the limitations of extended family to inherit were changed so cousins could no longer inherit. The government also created a general inheritance fund⁴. This is a public fund where the inheritance of people without legal heirs and who have no "will" is deposited.

Wills

Although there was no provision for wills in King Magnus Erikssons city and rural laws, by 1686 a law for "wills" was created. This law stated a person could not give inherited land away in a will. There was also a limit to give no more than $\frac{1}{10}$ th of an estate to the church. Only people of legal age, "of sound and full understanding" could create a will. Women had the right to include their estate from "marriage rights" and the "morning gift" in a will. In 1857 the restriction to include inherited land in a will was lifted, a person could "will" their entire estate, on the condition that none of their descendants were left with nothing. The 1686 law also made it possible to put certain property (usually immovable) into "primogeniture"⁵ meaning it can only be inherited by an oldest son. The practice was discontinued by 1930 and abolished in 1963.

⁴ Allmänna Arvsfonden

⁵ An exclusive right of inheritance belonging to the eldest son

Children Born Out of Wedlock

Magnus Erikssons city and rural laws, and the 1734 Swedish Law state that a child born to an unmarried, or not even engaged couple cannot inherit from the father or mother (except in cases of rape.) Changes to the law in 1866 allowed children born out of wedlock to inherit from their mother if it was not a case of adultery. In 1905 the right to inherit was expanded to include relatives on the mother's side. Another change was made in 1929 that allowed a child born out of wedlock to inherit from the father, if the father had acknowledged the child and given statement of such desire in the presence of witnesses. Finally, a law was passed in 1970 which stated that a child born out of wedlock could inherit from the father and mother.

Probate Records

According to the 1734 Swedish Law, a person's estate was supposed to go through probate within 3 months after death and a copy of the proceedings was supposed to be turned in at the next court session. In principle, everybody who had "an estate" (which could be large or small) should have had a probate after their death. So why doesn't everyone who had belongings have a probate? The answer could be for a variety of reasons such as:

1. Some courts did a better job than others in preserving the copies of probates that were turned in at a court session. Essentially, they were piles of loose papers in a court record collection which at best were stuffed into the session proceedings book (dombok), tied together by string, or were eventually bound into a book. On other end, many were discarded when no longer deemed relevant and storage in the collection was cumbersome, or discarded after being damaged by water, humidity, mold, or vermin.
2. In some areas, the probate authorities might have only done a probate when the 1st person within a marriage died.

Probate Content

A typical probate will contain the following:

1. Preamble

The preamble includes, the date of the probate proceedings, the name of the probate authority, and the names of the assessors. The name of the deceased, the deceased's place of residence, the name of the surviving spouse (if the deceased was married), and the names of heirs according the laws of succession.

If the couple had children, they will mention each child, their legal standing, and often their age and place of residence.

If there are children who are under legal age, the preamble will mention the name of an appointed guardian.

If a daughter is married, it will mention her husband's name and where they live.

It often includes a statement of the "cooperation by the surviving spouse to do an inventory of the household as follows."

2. Inventory

After the preamble, you will see an inventory of the estate which usually begins with immovable property (if they owned their home or land.) This is followed by any objects made of gold or silver, and if they had cash. Then it continues with objects made of other metals next such as: brass, copper, tin, and iron; and then items made of wood, along with clothing, and other household items. Next comes a list of stored grain, farm tools, equipment, and animals. By law the inventory should be accurate to the time of death. The surviving spouse (or whoever gave access to the belongings') would state accuracy by oath. Falsely giving oath was perjury which was punishable by loss of inheritance rights, fines, and loss of honor in the community.

3. Assets and Debts

After the inventory, you will see a total value of the estate which is followed by a list of any outstanding debts. This section should be studied as it may contain names and relationships of family who need to be re-paid. Prior to the proceedings, a public notice was done to give the public an opportunity to appear and claim unpaid debts.

Regarding Probate Records

- A. Although there are some surviving probates from the 1600's, they became more common after the 1734 Swedish Law.
- B. A percentage (often 1/8 percent) of the estate was paid to the local parish poor fund. This was incentive for the local priest to report the death of people in his parish to the court.
- C. After a probate was done, the authorities made a copy which was supposed to be turned in at the next court session. In rural areas, the copy became part of the district court (häradsrätt) collection. In the cities, they became part of the city court (rådhusrätt) collection. Probates for nobility were sent to the higher court (hovrätt.)
- D. Although the law stated that a probate should be done within 3 months after death, sometimes it was months or even 1 or 2 years later.
- E. Through the years many "registers" of probate records have been created which are accessible in different forms. Arkiv Digital has digitized many registers which can be searched within the court collection.
- F. Many probate registers that have been indexed to create searchable databases. ArkivDigital is in the process of indexing all the probate registers into one probate database for the whole country. There are probate indexes for some counties on Riksarkivet, SVAR's website.

Inventory Vocabulary

Swedish Historical Dictionary Database at: <http://swedishgenealogyguide.com/dictionaries/swedish-historical-dictionary-database-shdd>. Or Dombokforskning.se at: <http://www.dombokforskning.se/dombokslexikon.htm>